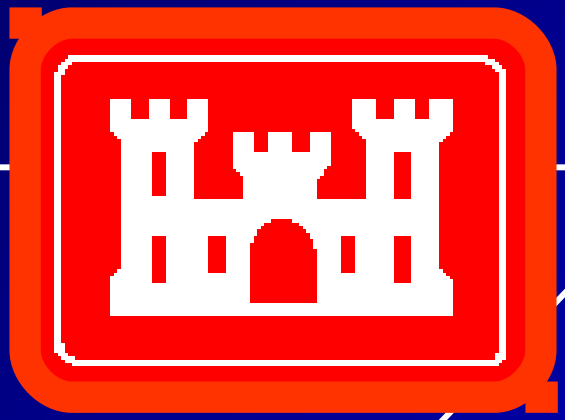


US Army Corps of Engineers
Savannah District Regulatory Division Coastal Branch

Rapanos Overview

What is Rapanos?

- USACE JD Form Instructional Guidebook
- USACE Approved JD Form
- USACE/EPA JD Coordination Memo
- Regulatory Guidance Letters (RGL) 07-01, 06-01 and 05-02
- Subsequent Court Decisions

New Terms and Acronyms

Savannah District

WOUS

Tributary

Swale

Relevant Reach

TNW

Isolated

Ditch

Non-Abutting

Significant Nexus

RPW

Continuous Surface Connection

Non-RPW

Abutting

Adjacent

Stream Order

Similarly Situated

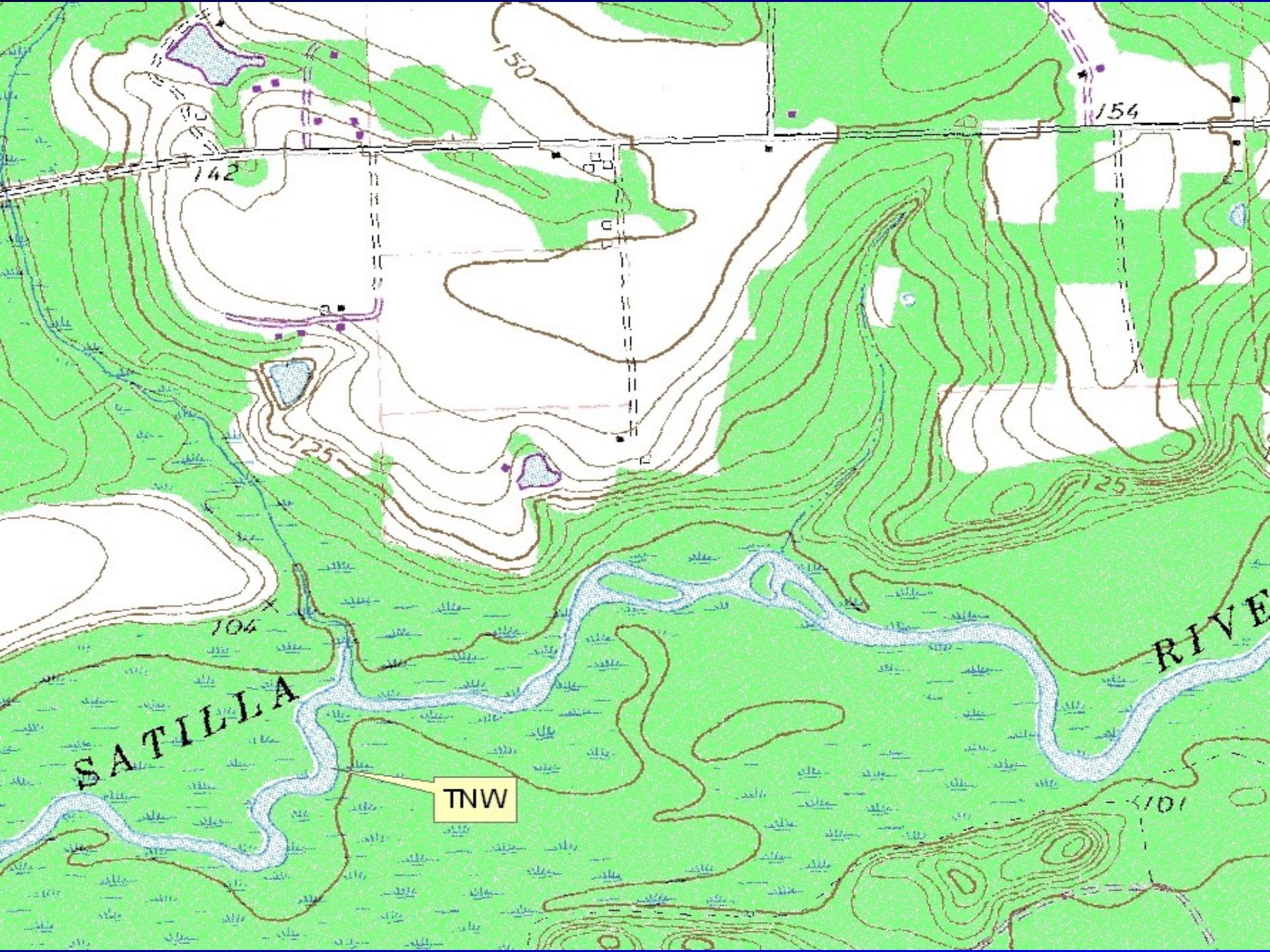
Review Area

New Terms

Traditional Navigable Waters (TNW)

- **Subset of Waters of the US**
- **Includes all navigable waters of the US (33 CFR, Part 329) and all waters that are navigable-in-fact**
- **Savannah interim policy includes all named rivers on USGS Quad Sheets and can include named streams**
- **TNW is jurisdictional by definition**

TNW?


150
154
142
125
125
104
SATILLA
RIVE
101
TNW

New Terms

Tributary

- Natural, man-altered or man-made waterbody that carries flow directly or indirectly into a TNW
- River, stream, ditch or other surface feature
- For the purposes of completing JD Forms, a tributary is the entire reach of a stream of the same order

New Terms

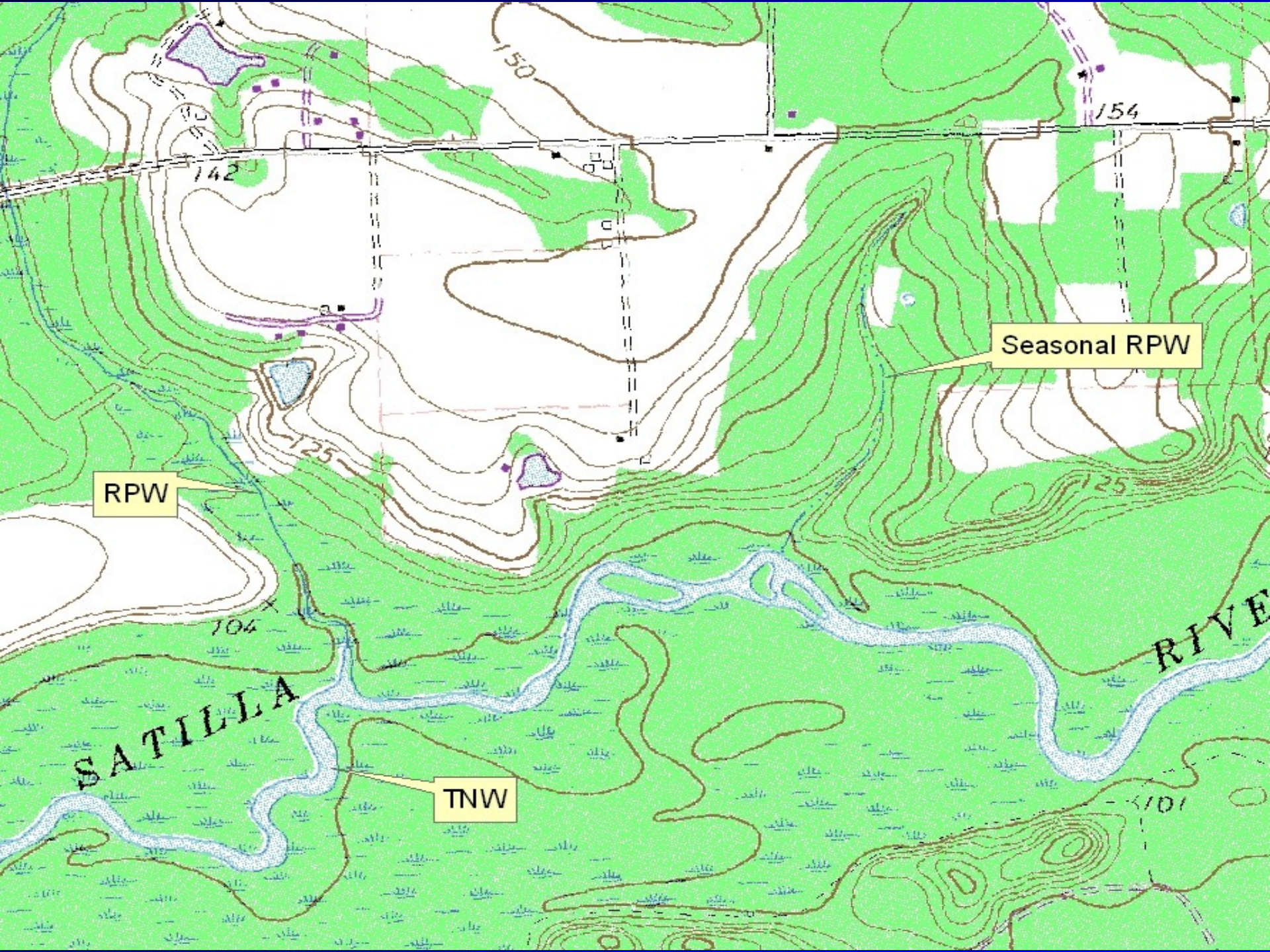
Stream Order (Strahler)

- 1st Order: uppermost un-branched stream segment
- 2nd Order: confluence of two 1st order streams
- 3rd Order: confluence of two 2nd order streams

New Terms

Relatively Permanent Waters (RPW)

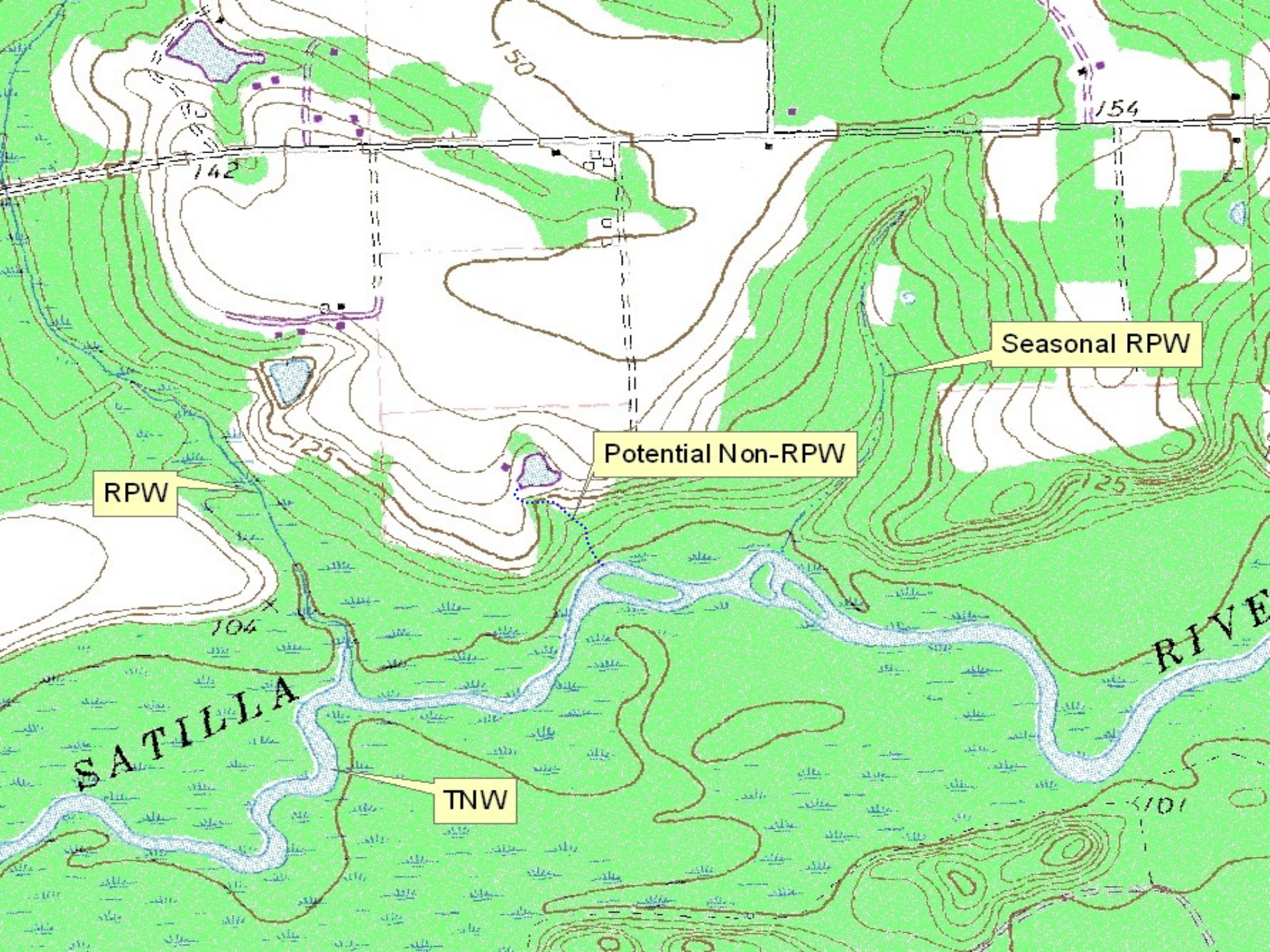
- RPW is a tributary that is not a TNW and that typically flows year-round
- Perennial stream is a RPW
- Seasonal RPW has flow continuously for at least 3 months of the year
- Intermittent stream is a seasonal RPW
- All RPWs are jurisdictional by definition


150
154
142
125
Seasonal RPW
RPW
104
SATILLA
TNW
101

New Terms

Non-Relatively Permanent Waters (Non-RPW)

- Non-RPWs are tributaries that do not flow continuously for 3 months of the year
- Ephemeral streams are non-RPWs
- Non-RPWs are only jurisdictional if there is a Significant Nexus to a TNW


Seasonal RPW
Potential Non-RPW
RPW
TNW
SATILLA
150
154
142
125
104
101

New Terms

Continuous Surface Connection

- Surface feature that is not a RPW or Non-RPW, but serves as a hydrologic connection between a wetland and a tributary
- Indicators of flow may not always be present
- Swales, gullies and ditches
- Swales and gullies are non-jurisdictional by definition

New Terms

Swale (non- jurisdictional)

- Shallow surface feature in area with little slope and only flows during and after storm events
- Bottom is typically grassed

New Terms

Jurisdictional Ditch

- Excavated in wetland
- Excavated in upland but drains wetland
- Has relatively permanent flow (seasonal)

New Terms

Non-jurisdictional Ditch

- Excavated wholly in upland and drains upland
- Does not have relatively permanent flow
- Most roadside ditches

New Terms

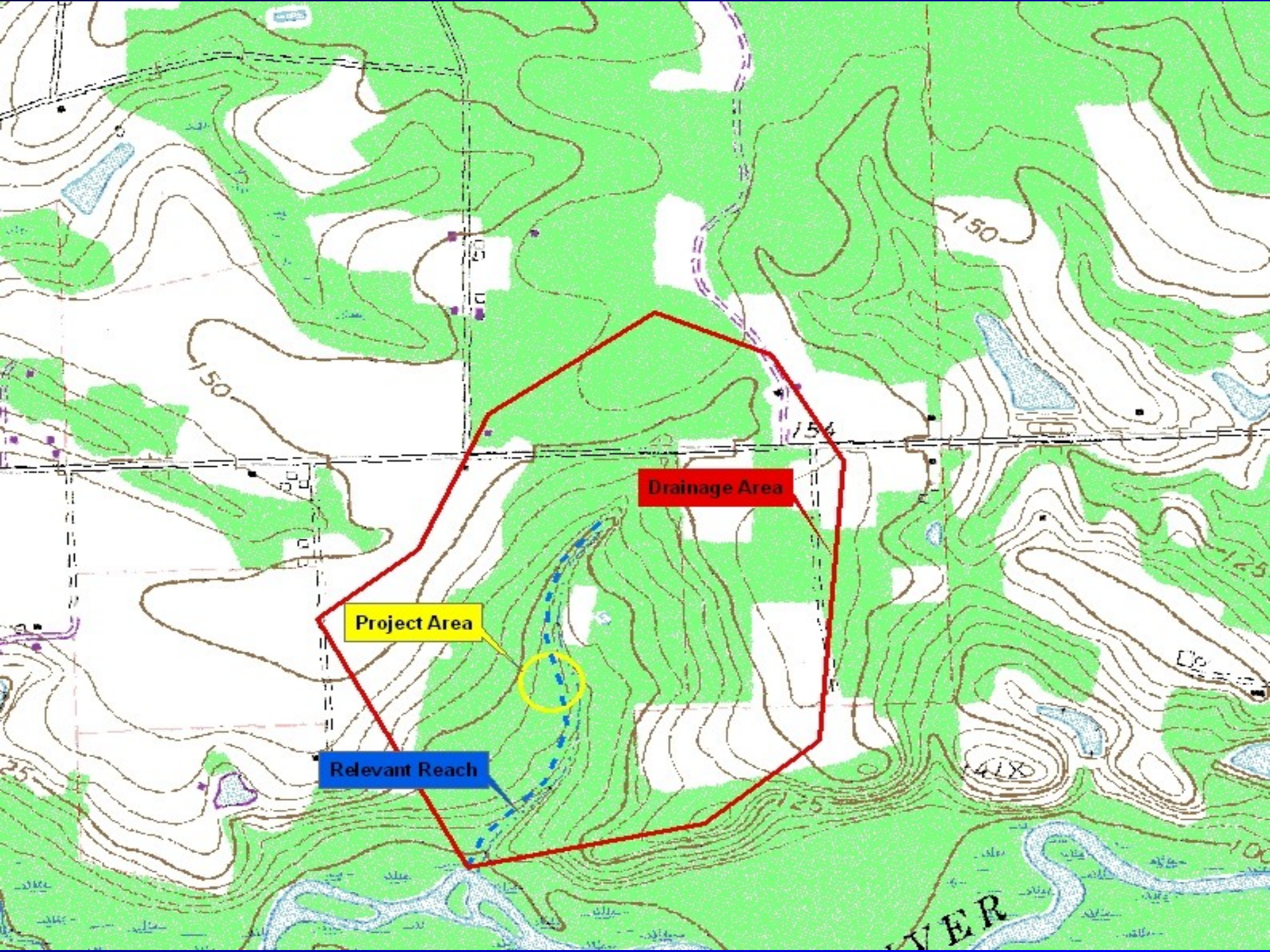
Adjacent vs. Abutting vs. Isolated

- Old Adjacent = wetlands that are bordering, contiguous or neighboring waters of the US
- New Adjacent = jurisdictional wetlands that are not contiguous to waters of the US
- Abutting = adjacent wetlands that are contiguous to jurisdictional waters of the US
- Non-abutting (same as new adjacent) = jurisdictional wetlands that are not contiguous to waters of the US
- Isolated = non-jurisdictional wetlands that are not adjacent to jurisdictional waters of the US

New Terms

Relevant Reach

- The reach of a tributary to be evaluated in making a significant nexus determination
- Entire reach from headwaters or upstream point where two lower order streams join to from tributary; downstream to the point of confluence with a higher order stream
- Flow characteristics of the tributary (reach) are evaluated at it’s furthest downstream limit


Drainage Area
Project Area
Relevant Reach
150
154
125

New Terms

Review Area

- The relevant reach of a tributary and all adjacent wetlands (and other waters) to be evaluated for a significant nexus determination
- Do not confuse the project area with the review area
  - A small project area would likely have a corresponding larger review area
  - A large project area may have several smaller internal review areas

New Terms

Similarly Situated

- Wetlands in the review area that are located in similar landscape positions with regard to their adjacency to the relevant reach
- This term is for descriptive purposes only and does not increase of decrease jurisdiction for wetlands found to be similarly situated within a review area

New Terms

Significant Nexus Determination

- Analysis of the flow characteristics and functions of relevant reach; including volume, duration, frequency and proximity to TNW
- Flow characteristics of the relevant reach are analyzed in combination with functions collectively performed by all adjacent wetlands
- Analysis must conclude the relevant reach has more than an insubstantial or speculative effect on the chemical, physical and/or biological integrity of downstream TNW for there to be a significant nexus

What Does It Mean?

Corps Asserts Jurisdiction

- Oceans to the continental shelf, tidal waters and inland Section 10 navigable waters
- TNWs and all adjacent wetlands
- RPWs, including seasonal flow RPWs
- Wetlands abutting all RPWs
- Wetlands adjacent to all RPWs, with signex
- Non-RPWs and adjacent wetlands, with

What Does It Mean?

Corps Does Not Assert Jurisdiction

- Swales and upland ditches that drain upland
- Isolated waters and wetlands (Rapanos did not change SWANCC)
- Non-RPWs and adjacent wetlands, if significant nexus to TNW does not exist

Coordination

Savannah District

Isolated Non-Jurisdictional Wetland Determinations

- 15-day coordination period with EPA and HQ
- EPA elevated one isolated wetland determination

Significant Nexus Determinations

- 15-day coordination period with EPA
- EPA has not elevated any significant nexus determinations

QUESTIONS?

Savannah District

2007 Coastal Branch Workshop

http://www.usace.army.mil/cw/cecwo/reg/cwa_guide/cwa_guide.htm